

JCMN-25,671B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

In re application of: Jon Cameron et al.

Serial No.: 08/986,287

Filed: December 6, 1997

Group: 2876

Examiner: J. Yven (Formerly H. Pitts)

For: MORPHING BAR CODE  
(Formerly entitled : THERMOCHROMIC BAR CODE)

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MAR 28 2003

OFFICE OF THE SPECIAL  
PROGRAMS EXAMINER

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JUN 12 2001

OFFICE OF PETITIONS

Assistant Commissioner  
for Patents  
Washington, D. C. 20231

Dear Sir:

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JUN 19 2001

TECHNOLOGY CENTER 2800  
SPECIAL PROGRAM CENTER

**PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT  
UNDER 37 C.F.R. 1.181 & FOR**

**SUSPENSION OF THE RULES UNDER 37 C.F.R. 1.183**

06/12/2001 GTEFFERA 00000117 08986287

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130.00 OP

**REQUESTS**

I. Applicant requests Withdrawal of Holding of Abandonment, such that Application Serial No. 09/453,545, filed on December 3, 1999, will be considered co-pending with the present application, to obtain the priority date of the present application, December 6, 1997. This request has two bases.

A. The first basis is that Application Serial No. 09/453,545 was timely filed, at the same time as the *Petition to Revive* in the present application, with a copy of the transmittal letter for the Application Serial No. 09/453,545 being attached to the *Petition to Revive*, and indicating its status as a continuation application of the present application.

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EL 822706707 US, in an envelope addressed to Assistant Commissioner for Patents, Washington, DC 20231 on

6-8-01  
(Date of Deposit)

Mark W. Handley  
(Name of Person Mailing Document)

Man  
(Signature)

6-8-01  
(Date of Signature)

B. The second basis for this request is that Application Serial No. 09/453,545 was filed as a continuation application of the present application, at the same time that a *Petition to Revive* was filed in the present case as a separate paper authorizing charges against a firm Deposit Account under 37 C.F.R. 1.17. This *deposit account authorization* set forth in the *Petition to Revive* occurred on December 3, 1999, within five (5) months of the mailing of a Form PTOL-327, *Paper No. 6*, which specifically extended the time to take action until August 7, 1999, beyond the statutory period of response to the first Office Action which was mailed January 22, 1999.

II. Should either of the above two Requests be denied, Applicant requests Suspension of that part of Rule 1.181(f) which states that "Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested *may* be dismissed as untimely, except as otherwise provided. This two-month period is not extendable." 37 C.F.R., 1.182(f) (*emphasis added*). Applicant further requests that arguments submitted herein be considered as responsive for reconsideration in the following papers in the present application:

A. Reconsideration of the PTOL-327, *Paper No. 6*, mailed July 6, 1999, as to whether Applicant's *Amendment A* filed on April 22, 1999 was proper and responsive to the Office Action of January 22, 2001.

B. Reconsideration of the mailing of the decision in *Paper No. 12*, mailed May 9, 2000, which dismissed Applicant's *Petition to Revive* as not being filed with a timely response, since Application Serial No. 09/453,545 was filed as a continuation of the present application, as a separate paper with of copy of the transmittal therefor attached to the *Petition to Revive*.

C. Reconsideration of the failure of the United States Patent & Trademark Office's failure to charge a fee for a four (4) month extension of time (small entity) according to the *deposit account authorization* set forth in the *Petition to Revive* filed contemporaneously with the continuing Application Serial No. 09/453,545. (Note: Applicant does not request

that the deposit account of his former attorney be charged, but rather that he be given the opportunity to pay such fees should such relief be granted in this part II.C., and none of the other relief requested in other parts of this Petition be granted).

Applicant's seeks Suspension of the Rules under 37 C.F.R.1.183 based on the extraordinary situation created by the conduct of the Examiner in the present case, Harold I. Pitts, as directed toward a pro se applicant, giving rise to the abandonment of the instant case.

### STATEMENT OF FACTS

The following Statement of Facts has two sections. The first section entitled "*FACTS EVIDENT FROM THE PROSECUTION HISTORY*" sets forth those facts which are discernable by Applicant's Attorney from the Prosecution History of the present Application, having Serial No. 08/986,287, on December 6, 1997. A second, separate section entitled, "*FACTS FROM THE DECLARATION OF JON D. CAMERON*" sets forth those facts from the *DECLARATION OF APPLICANT, Jon D. Cameron*, attached hereto as *Appendix A*.

Also attached as *Appendix B* is a copy of a Decision of the Board of Patent of Appeals and Interferences, mailed by the U.S. Patent & Trademark Office on March 28, 2000, which was *Paper No. 24* in Application Serial No. 08/206,127, which issued as U.S. Patent No. 6,142,368 on November 7, 2000, and an attached copy of the front page of U.S. Patent No. 6,142,368. The Decision in *Appendix B*, although not written for publication and not issued as binding precedent of the Board, is being submitted herewith and discussed in the Statement of Facts as evidence of a regular course of conduct by the particular Examiner in the present case, in not following the Rules of the Manual Of Examining Procedures proximate to the time of his Examination of the present application, and is included herewith solely for the purpose of obtaining grant of the present *Petition*. See generally, *Appendix B*, and in particular, page 11, the fourth paragraph, discussing differences between the Examiner's approach and the MPEP.

### FACTS EVIDENT FROM THE PROSECUTION HISTORY

Applicant, acting pro se, filed the above-referenced application for utility patent on December

6, 1997. An Office Action was mailed on January 22, 1999. On April 17, 1999, Applicant, acting pro se, in response to the Office Action, filed *Amendment A* by depositing the document in First Class Mail, with a signed, certificate of mailing set forth on page 16 of *Amendment A*. *Amendment A* was stamped by the U.S. Patent & Trademark Office as being received on April 22, 1999, within three (3) months of the mailing date of the Office Action of January 22, 1999. In *Amendment A*, Applicant requested reconsideration of the Application. (See page 15, third paragraph).

On July 6, 1999, the U.S. Patent & Trademark Office Examiner in the case, Mr. Harold I. Pitts, issued a *Communication from the Examiner* (PTOL-327) and indicated that the Amendment filed April 22, 1999 was non-responsive. Examiner Pitts reasoning for non-responsiveness of the April 22, 1999 filing was that the "Claims now presented are Non-Elected by original presentation. Amendments to Specification are not Rule 121." Examiner Pitts then suggested that Applicant:

- "1. Acquire services of EXPERIENCED Patent Attorney.
2. File CPA with Application/Claims in Proper Form."

This notice indicated to the Applicant that the Period for Response was extended to one month from the issuance of the *Communication* (due August 6, 1999), or until the expiration of the period for response set in the last Office Action (due April 22, 1999), whichever is later. (Applicant notes that, with a three month extension of time from August 6, 1999, the *Continuation Application* filed December 6, 1999 would be timely filed).

On October 13, 1999, Examiner Pitts mailed a *Notice of Abandonment*, indicating that the application was abandoned, for failure to timely file a proper response to the *Office Action* mailed on January 22, 1999.

On December 3, 1999, a *Petition to Revive an Application for Patent Abandoned Unintentionally* was stamped as being received by the U.S. Patent & Trademark Office, along with a fee and authorization to charge any additional fees against a Deposit Account. Filed with the *Petition* was the *Continuation Patent Application*, which is now Application Serial No. 09/453,545, filed December 3, 1999, as instructed by Examiner Pitts in the Communication of July 6, 1999 in the "Constructive Suggestions."

Petitioner notes that the *Communication* of July 6, 1999 if extended for three (3) additional months with payment of the appropriate fees, would have been extended until December 6, 1999. The transmittal letter forwarded with the *Petition to Revive an Application for Patent Abandoned Unintentionally*, which was filed stamped as being received in the U.S. Patent & Trademark Office on December 3, 1999, authorized payment of the extension fees, and noted the filing of the *Continuation Patent Application*, now Serial No. 09/453,545, as being a proper response to the *Office Action* issued by Examiner Pitts on January 22, 1999. Thus, a *Continuation Application* was filed, with a deposit account authorization for payment of additional fees being filed as a separate paper in the present case. The paper, the above-noted *Petition to Revive*, included authorization for payment of fees for an Extension of Time by specifically referencing 37 C.F.R. 1.17. Thus, the *Continuation Application* was filed within the allotted time for payment of an extension of time, from July 6, 1999, the mailing date of *Communication from the Examiner* (PTOL-327).

#### FACTS FROM THE DECLARATION OF JON D. CAMERON

Mr. Cameron filed this Application pro se. After filing of the Application, the Examiner initially assigned to this matter, Examiner Pitts, discouraged Mr. Cameron from prosecuting the application pro se. Examiner Pitts on several occasions refused to either speak to or reason with Mr. Cameron regarding the substantive issues in the case. Instead, Examiner Pitts insisted that Mr. Cameron engage the services of a registered patent attorney. Examiner Pitts voice mail even stated that callers should not leave messages if they were not patent attorneys. The only discussion Examiner Pitts would engage in with the Applicant regarded him instructing Mr. Cameron to engage the services of a Registered Patent Attorney.

### **ARGUMENT**

#### I. WITHDRAWAL OF HOLDING OF ABANDONMENT UNDER 1.181

Applicant requests Withdrawal of Holding of Abandonment, such that Application Serial No. 09/453,545, filed on December 3, 1999, will be considered co-pending with the present application, to obtain the priority date of the present application, December 6, 1997. Application Serial No. 09/453,545 was timely filed with the *Petition to Revive*, and a copy of the transmittal letter for the Application Serial No. 09/453,545 was attached to the *Petition to Revive* and indicated its status as

a continuation application of the present application. Attached hereto as *Appendix C* is a copy of the portion of the Prosecution History of Application Serial No. 09/453,545, which was filed on December 3, 1999, of even date with the *Petition to Revive* in the instant case. Applicant respectfully submits that such a continuation application is a proper response to the Office Action mailed January 22, 1999. Applicant further notes the *Petition to Revive* was filed with the appropriate fee to revive an unintentionally abandoned application.

The second basis for the request to withdraw the holding of abandonment is that Application Serial No. 09/453,545 was filed as a continuation application of the present application, as shown in *Appendix C*, at the same time that a *Petition to Revive* was filed in the present case. The *Petition to Revive* was filed a separate paper, specifically authorizing charges against a firm Deposit Account under 37 C.F.R. 1.17, which sets forth the fees for extensions of time. This *deposit account authorization* occurred on December 3, 1999, within five (5) months of the mailing of a Form PTOL-327, *Paper No. 6*, which specifically extended the time to take action until August 7, 1999, beyond the statutory period of response to the Office Action mailed January 22, 1999. Applicant submits that a four (4) month extension of time should have been charged to extend the time for filing a response to the Form PTOL-327, *Paper No. 6* of the present application, upon a finding that the *Petition to Revive* was dismissed.

Applicant requests Withdrawal of the Holding of Abandonment in the present case for the forgoing reasons, such that Application Serial No. 09/453,545 is considered copending with the present application and can claim the benefit of the December 6, 1997 filing date as a continuing application.

## II. SUSPENSION OF THE RULES UNDER 37 C.F.R. 1.183

Should either of the above two Requests be denied, Applicant requests Suspension of that part of Rule 1.181(f) which states that "Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested *may* be dismissed as untimely, except as otherwise provided. This two-month period is not extendable." 37 C.F.R., 1.182(f).

Applicant's seeks Suspension of the Rules under 37 C.F.R. 1.183 based on the extraordinary situation created by the conduct of the Examiner in the present case, Harold I. Pitts, as directed toward a pro se applicant, giving rise to the abandonment of the instant case. As evidenced by the *Declaration of Jon D. Cameron*, attached as *Appendix B*, the Examiner at all times refused to discuss the substantive issues in the case with the Applicant. When requested by the Applicant to draft an acceptable claim, even with the pro se Applicant's direct recitation to the pertinent M.P.E.P. section, the Examiner refused to take such action, even though such action is set forth in the M.P.E.P. as part of the official procedures for the U.S. Patent & Trademark Office. The Examiner's regular practice of not following M.P.E.P. guidelines is further evidenced by the decision of the Board attached as *Appendix B*, and in particular, is noted by the Board on page 11, fourth paragraph, in reference to the Examiner's approach in that case being strikingly different from that set forth in the M.P.E.P. Applicant respectfully submits for consideration that such actions as those taken by the Examiner, as set forth in both *Appendix A*, the *Declaration of Jon D. Cameron*, and *Appendix B*, the attached Decision of the Board, although daunting when directed toward a registered practitioner, raise a likely untenable barrier to the pro se Applicant. The raising of such a barrier to the pro se Applicant in the present case created an extraordinary situation, such that justice requires that Applicant be granted his requests raised in this Petition, such that the holding of abandonment in the present case is withdrawn.

Should such Suspension of the Rules be granted, Applicant requests reconsideration of the record set forth in the Prosecution History of the present Application, and opportunity to respond to any such findings in response hereto, regarding:

A. The Examiner's decision set forth in the Form PTOL-327 mailed July 6, 1999, as to whether Applicant's *Amendment A* filed on April 22, 1999 was proper and responsive to the Office Action of January 22, 2001. Applicant respectfully submits that a comparison of *Amendment A*, set forth in the prosecution history of the present application, will show the same invention as that set forth in the application as filed, and requests such review and reconsideration.

B. The decision set forth in Paper No. 12, mailed May 9, 2000, which dismissed Applicant's *Petition to Revive* as not being filed with a timely response, since Application Serial No. 09/453,545, attached hereto as *Appendix C*, was filed as a continuation of the present application, as a separate paper with of copy of the transmittal therefor attached to the *Petition to Revive*.

C. The failure of the United States Patent & Trademark Office's failure to charge a fee for a four (4) month extension of time (small entity) according to the *deposit account authorization* set forth in the *Petition to Revive* filed contemporaneously with the continuing Application Serial No. 09/453,545. (Note: Applicant does not request that the deposit account of his former attorney be charged, but rather that he be given the opportunity to pay such fees should such relief be granted in this part II.C., and none of the other relief requested in other parts of this Petition be granted).

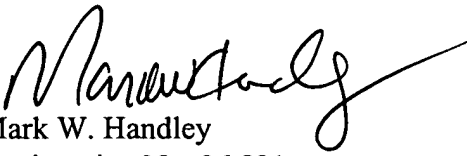
Applicant thus requests suspension of the rules, to require consideration of Withdrawal of the Holding of Abandonment in the present case for each of the various reasons set forth hereinabove, such that Application Serial No. 09/453,545 is copending with the present application and can claim the benefit of the December 6, 1997 filing date as a continuation application.



Please charge any additional fees or deficiencies in fees or credit any overpayment to Deposit Account No. 20-0780/JCMN-25,671 of HOWSON, CHAUZA, THOMA, HANDLEY & ARNOTT, L.L.P.

Respectfully submitted,

HOWSON, CHAUZA, THOMA, HANDLEY & ARNOTT, L.L.P.  
Attorneys for Applicant

  
Mark W. Handley  
Registration No. 36,821

MWH/jk

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June 8, 2001

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JUN 12 2001

OFFICE OF PETITIONS



JCMN-25,671B

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jon Cameron et al.

Serial No.: 08/986,287

Filed: December 6, 1997

Group: 2876

Examiner: J. Yven (*Formerly H. Pitts*)

For: MORPHING BAR CODE  
(Formerly entitled : THERMOCHROMIC BAR CODE)

RECEIVED

JUN 12 2001

OFFICE OF PETITIONS

Assistant Commissioner  
for Patents  
Washington, D. C. 20231

Dear Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. EL 822706707 US, in an envelope addressed to Assistant Commissioner for Patents, Washington, DC 20231 on	
6/8/01	(Date of Deposit)
Mark W. Hardy	(Name of Person Mailing Document)
MA	(Signature)
6/8/01	(Date of Signature)

**DECLARATION OF JON D. CAMERON**

I, Jon D. Cameron, hereby declare that:

(1) On December 6, 1997, I filed the present U.S. Application for a Regular Utility Application, having Serial No. 08/986,287, and entitled, "*THERMOCHROMIC BAR CODE*."

(2) In the transmittal for the Application, I requested assistance from the Examiner assigned to the application with the statement:

**Request Under M.P.E.P. § 707.07(j):** The undersigned, a pro se applicant, respectfully requests that if the Examiner finds patentable subject matter disclosed in this application, but feels that the Applicant's present claims are not entirely suitable, the Examiner draft one or more allowable claims for applicant.

(See the Transmittal for the present Application, filed December 6, 1997).

(3) Examiner Pitts was assigned to examine the application. I made numerous attempts to contact the Examiner to discuss my application for patent. When I called the Examiner's telephone number, at the U.S. Patent & Trademark Office, his voice mail message stated:

This is Examiner Pitts.... Please leave a message only if you are an attorney.  
(Quoting the Examiner's voice mail message) (emphasis added).

The Examiner did not return my telephone calls when I left a message.

(4) When the Examiner would answer his telephone at the U.S. Patent & Trademark Office, he refused to speak to me regarding the substantive reasons for his rejection of the Application, except that, at all times, Examiner Pitts insisted that I engage the services of a Registered Patent Attorney, and that I not proceed without a Registered Patent Attorney.

(5) In a later conversation with Examiner Pitts, some months after my first conversation, he directly stated that:

*lying?*  
*disturbance?*  
[He] did not think I got it the first time we talked. [He] would not handle an application without an attorney involved, and that not under any circumstances would he approve an application unless it was handled by an attorney.

(Paraphrasing the Examiner's comments).

His stated reasoning is that such an application would be "to difficult" for him to deal with.

*but not for 1st time*  
(6) The Examiner issued an Office Action mailed January 22, 1999. I filed an Amendment in response to the Office Action prior to the due date. In the Amendment, on page 15, in the third paragraph, I requested reconsideration of the Application, as amended. Additionally, on page 15, paragraph 5, I again requested Constructive Assistance under M.P.E.P. § 707.07(j), setting forth:

Applicants have amended the specification and claims of this application so that they are proper, definite, and define a novel structure that is also unobvious. If, for any reason this application is not believed to be in full condition for allowance, ***Applicants respectfully request the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. § 707.07(j)*** in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

(Amendment A, paragraph 5) (emphasis added).

(7) Rather than receiving help with the Application from Examiner Pitts, he instead issued a *Communication/Notice to Applicant* of July 6, 1999, stating:

**CONSTRUCTIVE SUGGESTIONS**

**1. ACQUIRE THE SERVICES OF EXPERIENCED  
PATENT ATTORNEY**

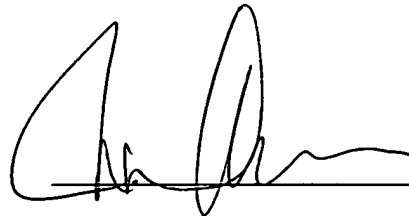
**2. FILE CPA WITH APPLICATION/CLAIMS IN PROPER FORM.**

(*Paper No. 6, section 4*).

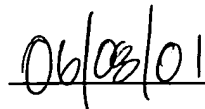
(5) On October 13, 1999, a *NOTICE OF ABANDONMENT* issued, and then I retained the services of a Patent Attorney, who on the same day filed a *Petition to Revive* and a *Continuation Application*. The *Petition* was dismissed for failure to file a proper reply, although a *Continuation Application* was prepared and filed by a Registered Patent Attorney with the *Petition to Revive*, according to the only "Constructive Suggestions" I received from Examiner Pitts in the *Communication/Notice to Applicant* of July 7, 1999.

(6) The Examiner did not at any time suggest an amended form of the Claims which might contain allowable subject matter.

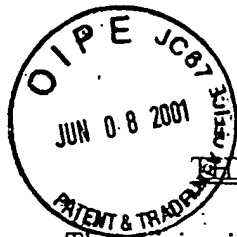
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Jon D. Cameron



Date



APPENDIX B

part of paper  
#14

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 24

**MAILED**

**MAR 28 2000**

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* Joseph M. Mullins and Donald M. Mills

Appeal No. 1997-4417  
Application 08/206,127

ON BRIEF

**RECEIVED**

**JUN 12 2001**

**OFFICE OF PETITIONS**

Before STONER, *Chief Administrative Patent Judge*,  
HARKCOM, *Vice Chief Administrative Patent Judge*, and  
WILLIAM F. SMITH, *Administrative Patent Judge*.

STONER, *Chief Administrative Patent Judge*.

This is a decision on the appeal from the final Office action mailed February 5, 1996. The claims before us on appeal are claims 1 through 30 and 39 through 43 and the statutory basis for rejection is 35 U.S.C. § 103. In this instance we shall refrain from listing the references relied upon by the examiner, as is our custom, because uncertainty in that regard, as well as in several other regards, makes this record virtually unreviewable. Because the examiner has not clearly stated the basis for the rejections of claims 1 through 30 and 39 through 43, we

- (1) *vacate* the rejection of claims 1 through 30 and 39 through 43 advanced by the examiner in the final Office action mailed February 5, 1996, in the answer mailed October 31, 1996, in the supplemental answer mailed March 12, 1997, and in the second supplemental answer mailed June 18, 1997 and
- (2) *remand* the application to the examiner for entry of an appropriate Office action which provides a clear statement of the basis for rejecting the pending claims, or such other action as may be appropriate to conclude the prosecution of this application.

#### FINDINGS

A review of the history of the examiner's actions and the applicant's responses reveals the following facts:

1. Applicant filed an Information Disclosure Statement (Paper No. 2, filed March 3, 1994) citing several documents including:

U.S. 5,218,344	Ricketts	June 8, 1993
U.S. 4,835,372	Gombrich et al.	May 30, 1989
U.S. 4,732,411	Siegel	March 22, 1988
U.S. 4,707,592	Ware	November 17, 1987
U.S. 4,476,381	Rubin	October 9, 1984
Club Med®	page 57, Summer/Fall '92 brochure	1992

2. The examiner issued a first Office action (Paper No. 3, mailed September 23, 1994) rejecting claims 1 through 30 (four of which are independent claims) under 35 U.S.C. § 112, second paragraph, on the following grounds:

There has been no pointing out of claimed subject matter of the claims over the self-cited prior art whereby novel and/or unobvious subject matter is distinctly claimed. A specific claim comparison with Gombrich, Rubin, Ware and Siegel taken alone or in combination should be made.

3. No rejection invoking 35 U.S.C. §§ 102 or 103 was set forth in the first Office action.
4. In what appears to have been an attempt to make a restriction requirement the examiner stated:

In addition a different inventive concept is set forth in each set of independent/dependent claims and one set must be elected.

5. Applicant responded (Paper No. 4, filed December 12, 1994) by traversing the rejection under 35 U.S.C. § 112, second paragraph (p. 8) and traversing the restriction requirement (p. 11). Applicant also tentatively elected claims 1-3 and 19-36 (p. 11, l. 25), amended several claims (pp. 1-6) and added claims 31-38 (pp. 6-7).
6. The examiner issued a second Office action, which he made final (Paper No. 5, mailed March 22, 1995); In that paper, the examiner made the restriction final, withdrew claims 4-38 from consideration, and rejected claims 1-3 as follows:

Claims 1-3 are rejected under 35 U.S.C. § 103 as being unpatentable over the prior art as set forth previously with the further notation that Richetts of record (col. 5, line 13) teaches the prepaid account which may be "debited" upon vending.

7. Despite this reference to "the prior art as set forth previously" the record is devoid of any earlier rejections predicated on prior art.
8. The reference to "Richetts" appears to refer to U.S. Patent No. 5,218,344 to Ricketts, which was cited by the applicant in the Information Disclosure Statement filed March 3, 1994. The first Office action made no reference to either "Richetts" or "Ricketts".
9. The second Office Action made no mention of the rejection under 35 U.S.C. § 112, second paragraph, set forth in the first Office action.
10. Applicant petitioned the Commissioner (1) under 37 C.F.R. 1.181 to withdraw the finality of the Office action on the grounds that it was premature and (2) under 37 C.F.R. § 1.144 to withdraw the finality of the restriction requirement (Paper No. 6, filed April 28, 1995).
11. Decisions on petitions filed under 37 C.F.R. §§ 1.144 and 1.181 are delegated to the Group Directors according to MPEP § 1002.02(c).
12. So far as the record shows, this petition was not referred to the Group Director of Group 2500<sup>1</sup> for decision.
13. Instead, the examiner issued a third (non-final) Office action (Paper No. 7, mailed July 12, 1995) which "acquiesced" to applicant's election of claims 1-3 and 19-30 thereby granting part of the relief sought in the petition. At the same time, the examiner maintained the

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<sup>1</sup> At the time the petition was filed the technology centers had not been formed. What was then Group 2500, is now incorporated in TC 2800.



withdrawal of claims 31-38 from consideration thereby denying part of the relief sought in the petition.

14. The third Office action further rejected claims 1-3 and 19-30 under 35 U.S.C. § 103 as follows (note overstriking and italics indicate handwritten corrections):

Claims 1-3, 19-30 are rejected under 35 U.S.C. § 103 as being unpatentable over Ricketts and Gombrich as previously applied with Crutcher. The difference recited over Ricketts is in the employment of a Gombrich type ~~bracket~~ *bracelet*.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the wrist band of Gombrich which obviously could have "[l]ines of Weakness", discussed at the bottom of Col. 36 and Col 37 in the tracking and credit debiting system Col 5, line 3 et. seq. of Ricketts (which obviously involves a pre-payment which is debited as transactions occur) for non-security transactions under the rationale of interchangeable teachings of similar systems. Crutcher teaches the linking combination of bar coding of electronic bracelet devices. [sic]

15. The form PTO-892 attached to Paper No. 7 indicates that Crutcher is U.S. Patent No. 4,403,869.

16. In response to the third Office action applicant filed an amendment (Paper No. 9, filed October 16, 1995) canceling claims 31-38 (p. 2), amending several claims (pp. 2-4), adding new claims 39-43 (pp. 4-5), traversing the restriction requirement (p. 6) and traversing the rejection under 35 U.S.C. § 103 (p. 7).

17. The examiner issued a fourth (final) Office action (Paper No. 10, mailed February 5, 1996) rejecting claims 1-30 and 39-43 as follows:

Claims 1-30, 39-43 are rejected under 35 U.S.C. § 103 as being unpatentable over the prior art as set forth previously further in view of Ware (of record), Hughes and Boston.

Note Fig. 36 of Combrich. The applicant has amended to recite unsecured articles such as credit or debits cards with expiration dates. These are garden variety credit article concepts, which would have been obvious to employ with the prior art of the previous rejection. Note col. 11. [sic, 11], line 60 and col. 12, line 49, et seq. of Ware, col. 7, line 5 of Boston and the abstract of Hughes. The statement that claims 4-18 as amended merely have "the same inventive concept as those rejected" is accepted and these claims are included in the above rejection.

18. The reference to Combrich appears to refer to Gombrich et al., U.S. Patent No. 4,835,372, which the examiner relied upon in the prior Office actions. Hughes refers to U.S. Patent No. 5,336,870, and Boston refers to U.S. Patent No. 4,766,293, both cited on a form PTO-892 attached to Paper No. 10.
19. Applicant filed a request for reconsideration (Paper No. 11, filed May 9, 1996) traversing the final rejection of claims 1 through 30 and 39 through 43 under 35 U.S.C. § 103.
20. The examiner issued an advisory action (Paper No. 12, mailed May 20, 1996) stating that the request for reconsideration contained "no convincing argument".
21. Applicant thereupon appealed the final rejection. In attempting to state the issues for review, the applicant referred to the rejection of claims 1-30 and 39-43 under 35 U.S.C. § 103 "as being unpatentable over the prior art of record" (brief filed August 5, 1996, Paper No. 15, page 5).
22. With regard to the rejections, applicant states "[T]he rejection of all of the claims is omnibus in nature, and except for the first rejection dated August 23, 1994, each rejection depends on the prior rejection in the preceding Office Action. In order to understand the rejections, a compendium of the same is set forth below." (brief, p. 7).

23. Applicant further states "[T]he rejection of the claims was made en masse over the group of references. No attempt was ever made to identify where all the limitations of at least the independent claims were believed to be found in the prior art of record, or which reference(s) was the primary reference, or what suggestion existed in the references to support the combining of the teachings thereof." (brief, pp. 8-9).

24. In his answer (Paper No. 16, mailed October 31, 1996), the examiner listed seven documents as prior art of record relied upon, namely:

4,476,381	Rubin	10/9/84
4,707,592	Ware	11/17/87
4,732,411	Siegel	3/22/88
4,835,372	Gombrich	5/30/89
5,218,344	Ricketts	6/8/93
5,336,870	Hughes	8/9/94 (5/26/92)
Club Med® Brochure		1992

25. Examiner included an eighth document, U.S. Patent No. 4,900,906 to Pusic as a "Reference for Official Notice."

26. The format of the answer did not follow that set forth in MPEP § 1208.

27. In an attempt to correlate the art relied upon with the claims at issue, the examiner reproduced all the claims in the text of his answer (pp. 4-14). After each claim he made a brief statement purporting to relate the limitations of that claim to the references.

28. In the applicant's reply brief (paper No. 19, filed December 20, 1996), counsel noted what he considered to be the deficiencies in the answer particularly stating that the Examiner attempted to redefine the applicant's invention (pp. 1-2), miscopied the claims when

incorporating them into his answer (pp. 2-3), cited new prior art (Club Med® Brochure, of record but not previously relied upon), presented new grounds of rejection based on the newly cited prior art (p.3), and failed to address the applicant's arguments.

29. Applicant further filed an amendment (Paper No. 17, filed December 20, 1996) in response to what he had identified as the new grounds of rejection. Apart from illegible markings which may include the words "not enter" on the margin of this paper, the record is devoid of evidence that the examiner ever considered this amendment.
30. In response to the reply brief, the examiner issued a supplemental examiner's answer (Paper No. 20, mailed March 12, 1997. The supplemental answer begins by following the format set forth in MPEP § 1208, but deviates therefrom after item 10. The supplemental answer challenges the applicant's grouping of the claims (p. 2), denies having applied new prior art (p. 2), and again incorporates several claims into the answer (pp. 3-6).
31. Applicant thereupon filed an additional reply brief (Paper No. 21, filed April 17, 1997) traversing the examiner's arguments as to the grouping of the claims.
32. In reply, the examiner issued a one page "Examiner's Answer" (Paper No. 22, mailed June 18, 1997) stating:

The "reply to the Supplement Examiner's Answer" makes even less sense than any of the previous arguendo [sic]. Appellant appears to have confused himself.

## DISCUSSION

This Board serves as a board of review, not as a *de novo* examination tribunal. 35 U.S.C. § 7(b) ("the [Board] shall, on written appeal of an applicant, review adverse decisions of examiner's upon applications for patents ..."). Here, the examiner has failed to set forth a statement of a rejection that can be meaningfully reviewed.

Were we compelled to state the basis for the rejection being reviewed, we would be hard pressed to do so. The confusion created by:

- the examiner's statements regarding the ten patent documents and one nonpatent document cited at various stages of the prosecution,
- the examiner's lack of precision in delineating precisely which documents form the basis for the rejection,
- the examiner's failure to explain any proposed modification of one reference based on the teachings of another to arrive at the claimed subject matter, and
- the examiner's utter failure to explain why the proposed modification(s) would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made, makes the record unreviewable.

The Manual of Patent Examining Procedure, 7<sup>th</sup> Edition was extensively revised in July 1998. Section 706.02 (j) makes clear the PTO's view regarding the required contents of a rejection under 35 U.S.C. § 103. It explains in clear form matters that we think are, or ought to

be, of second nature to all patent examiners. That section is reproduced here for the convenience of the reader:

35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. After indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:

- (A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
- (B) the difference or differences in the claim over the applied reference(s),
- (C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
- (D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP Section 2143 - Section 2143.03 for decisions pertinent to each of these criteria.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex*

*parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). See MPEP Section 2144 - Section 2144.09 for examples of reasoning supporting obviousness rejections.

Where a reference is relied on to support a rejection, whether or not in a minor capacity, that reference should be positively included in the statement of the rejection. See *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970).

It is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply. Furthermore, if an initially rejected application issues as a patent, the rationale behind an earlier rejection may be important in interpreting the scope of the patent claims. Since issued patents are presumed valid (35 U.S.C. 282) and constitute a property right (35 U.S.C. 261), the written record must be clear as to the basis for the grant. Since patent examiners cannot normally be compelled to testify in legal proceedings regarding their mental processes (see MPEP Section 1701.01), it is important that the written record clearly explain the rationale for decisions made during prosecution of the application.

See MPEP Section 2141 - Section 2144.09 generally for guidance on patentability determinations under 35 U.S.C. 103, including a discussion of the requirements of *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966). See MPEP Section 2145 for consideration of applicant's rebuttal arguments. See MPEP Section 706.02(l) for a discussion of 35 U.S.C. 103(c).

The differences between the examiner's approach in the present case and the instruction provided by the MPEP are striking and really need no further emphasis. One reading the file history is left to guess and suppose what the examiner meant. That is unacceptable, in our view.

Frankly, there is much appeal in the applicant's argument that the rejections of all of the claims be reversed because the examiner has not set forth where the limitations of all of the claims

are to be found, and therefor has not established a *prima facie* case of obviousness (brief, pp. 40-41). We shall do nearly the same in vacating the rejections the examiner advanced in the final rejection mailed February 5, 1996, and the answer mailed October 31, 1996, and remanding this application to the examiner.

Upon return of the application, the examiner should reassess the patentability of the claims pending in this application. If the examiner believes that any claim is unpatentable, he should issue an appropriate Office action setting forth such a rejection. If the examiner determines that a claim in this application is unpatentable under 35 U.S.C. § 103, we urge the examiner to structure the rejection based upon the model set forth in MPEP 706.02(j). This will of necessity compel the examiner to determine the patentability of the claims on appeal on an individual basis.

This application, by virtue of its "special" status, requires an immediate action. MPEP § 708.01(d). It is important that the Board be informed promptly of any action affecting the appeal in this case.

VACATED AND REMANDED

  
BRUCE H. STONER, JR., Chief  
Administrative Patent Judge

  
GARY V. HARKCOM, Vice Chief  
Administrative Patent Judge

  
WILLIAM F. SMITH  
Administrative Patent Judge

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) BOARD OF PATENT  
) APPEALS AND  
) INTERFERENCES  
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)

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## APPENDIX C

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PRACTICING AS THE  
BEVERIDGE, DEGRANDI, WEILACHER & YOUNG  
INTELLECTUAL PROPERTY GROUP

December 3, 1999

Asst. Commissioner of Patents  
Washington, D.C. 20231

### CONTINUATION PATENT APPLICATION TRANSMITTAL LETTER

Inventor(s): Jon CAMERON et al.  
THERMOCHROMIC BAR CODE  
Attorney Docket No.: 32158M55309

Sir:

Transmitted herewith for filing are the following:

Continuation patent application including 12 pages of text, 7 sheets of drawings,  
unsigned Declaration, patent application transmittal, and Preliminary Amendment.

This application is filed as a continuation of U.S. Application No. 08/986,287 (the '287 application). The '287 application was handled pro se, and unfortunately, became abandoned. A separate Petition for Revival under 37 C.F.R. §1.137(b) is being filed to effect revival of the '287 application on the basis that the '287 application became abandoned unintentionally. For reference, a copy of the Petition for the '287 application also is enclosed herewith. Applicants are proceeding under the assumption that the Petition will be granted and that revival will be effected for the '287 application. Hence, this continuation will constitute the Response to an outstanding Office Action in the '287 application. Even if, for some reason, the Petition is denied, this continuation application includes all elements necessary to receive a filing date on its own.

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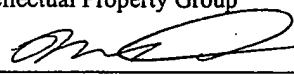
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Asst. Commissioner of Patents  
December 3, 1999  
Page 2

This continuation includes an unsigned Declaration. Filing fees will be submitted at the time that a signed Declaration is submitted to complete the application. Please note that the Declaration indicates the undersigned firm as hereinafter handling the prosecution of this case for the Applicants.

Respectfully submitted,  
SMITH, GAMBRELL & RUSSELL, LLP

Beveridge, DeGrandi, Weilacher & Young  
Intellectual Property Group

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December 3, 1999

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PG. 1 of 12

Patent Application of  
Jon Cameron  
and  
Tobin Gaedke  
for

# THERMOCHROMIC BAR CODE

## Background -- Field of the Invention

This invention relates to bar codes, specifically to identifying the bar code's temperature range.

## Background -- Discussion of Prior Art

### Universal Product Code and Bar Code

The Universal Product Code (UPC) bar code was originally introduced in 1971, Uniform Code Council Internet publication at [www.uc-council.org/ucchp.htm](http://www.uc-council.org/ucchp.htm), to provide an efficient method of matching a product against a pricing file and recording a sale. When the bar codes were scanned at cash registers, the resultant transaction data was stored electronically. By using this transaction data, businesses could track their products' sales and then market them

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accordingly. Prior bar code designs also include the European Article Number (EAN) and Japanese Article Number (JAN).

These bar codes all fail to resolve the need for tracking environmental conditions such as location and temperature. When the UPC was introduced in 1971, its scope was to communicate basic information from a main product file to an on-line transaction file. Storing the resultant transactional detail produced unmanageable file sizes. Computer systems of this generation were unable to store and process large transactional databases. These computer systems were unable to manage historical databases with only several fields data, making larger information gathering needs impracticable. Therefore, current applications of the UPC bar code data are limited by its original intention of only limited information retrieval.

Today, data from bar codes are now used by store-planning software to plot packaged goods products within a store. However, store-planning software was not invented until 1979. As space planners became sophisticated in their skill, it became apparent that UPC transaction data could identify product, price, and promotion but not absolute position. Product, price, promotion and position are called the Four P's of Marketing and traditionally comprise the basic information about a product.

Certain items, such as soda, bottled water, juice, beer, and margarine can have two separate, simultaneous locations within a retail store. For example, beer can be located within a storage cooler and an adjacent floor display. To correctly plan supply, orders, and marketing, it is necessary to know from which of the two locations a particular product was sold. At present, marketers have to guess at pertinent questions:

How much did I sell from my normal selling space?

How much did I sell from the display?

How did this display effect the product's promotion?

### Thermochromic Materials

Thermochromic materials are substances which emit different colors at associated temperature ranges. Thermochromics have been used as active components in temperature-specification devices, as shown in U.S. patent 4,156,365 to Heinmets et al (1979), U.S. patent 5,144,112 to Wyatt et al. (1992), and U.S. patent 5,622,137 to Lupton, Jr. et al. (1997). Each of these patents requires a human operator to visually identify the material's color and estimate its temperature accordingly. These inventions do not account for the different color-perception capabilities, or lack of color perception, among the general population.

Some thermochromic materials exhibit a one-time, permanent (quondam) change in color, as the one demonstrated in U.S. patent 5,622,137 to Lupton, Jr. et al. (1997), while other thermochromics are reversible, as shown in U.S. patent 5,558,700 to Shibahashi et al. (1996), and U.S. patent 5,480,482 to Novinson (1996).

### Objects and Advantages

Accordingly, the object of this invention is to provide an accurate method of establishing the temperature range of a product to which a bar code is attached. Several other objects and advantages of the present invention are:

- (a) to provide a bar code that requires no hardware modifications of bar code readers;
- (b) to provide a bar code that can establish a historical temperature range that marks product as unsalable;
- (c) to provide a bar code that can be printed using current package printing technologies;
- (d) to provide a bar code that will not significantly increase the price of the packaging;
- (e) to provide a bar code that identifies the position from where the product was selected when the product has multiple locations;
- (f) to provide a bar code that can contain two different codes;
- (g) to provide a bar code that allows the temperature differences among a set, sample, or population of items to be efficiently identified.

### Drawing Figures

Fig 1 shows an example of a UPC bar code.

Fig 2-A shows a thermochromic UPC bar code at standard room temperature.

Fig 2-B shows the same UPC bar code from Fig 2 when stored below 65 degrees F.

Fig 3 shows an exploded view of the bar code from Fig 1.

Fig 4-A shows an exploded view of the bar code from Fig 2.

Fig 4-B shows an exploded view of the bar code from Fig 3.

Fig 5 shows an example of a null UPC bar code.

#### List of Reference Numerals

10	Bar code
20	Module
30	Digit
40	Check Digit
50	Numeric Character
60	UPC Version A Bar code
70	Numeric Character Set
80	Thermochromic Digit
90	Light Module
100	Dark Module
110	Thermochromic Module
120	Null Bar code
130	Thermochromic Bar code

### Summary

The purpose of this invention is to provide a method of determining an item's temperature range when its bar code is scanned. This is accomplished by printing its bar code with thermochromic material(s) such that two separate codes are stored on the same bar code and such that each code is exclusively visible within a specific temperature range.

### Description—Figs 1 to 5

An example bar code 10 shown in Fig 1 is a UPC Version A bar code 60. Within bar code 10 is a series of parallel dark lines and light spaces of varying thickness which represent a numeric combination. Below bar code 10 is a numeric character set 70 which translates bar code 10. A digit 30 is a unit of barcode 10 consisting of two dark bars and two light spaces. Fig 1 illustrates bar code 10 with twelve digits 30. A module 20 is the smallest defined space in bar code 10. There are seven modules 20 per digit 30. Each digit 30 of bar code 10 is represented by a numeric character 50 located directly below digit 30. A check digit 40 is used to verify barcode 10.

Each digit 30 is represented by seven modules 20. A light module 90 and a dark module 100 are shown in Fig 3. Each unique digit 30 is constructed of a set of light modules 90 (Fig 3) and dark modules 100. The arrangement of modules 20 (Fig 1) creates the visual appearance of a series of dark lines and light spaces within bar code 10.

A typical embodiment of the present invention is illustrated in Figs 2-A and 2-B. A thermochromic bar code 130 (Figs 2-A and 2-B) incorporates thermochromic materials into modules 20 of one of its digits 30 and its check digit 40. Thermochromic materials, including inks, are materials which display different colors at different temperature ranges. For example, a



single ink made of thermochromic materials can be black at one temperature range and transparent at another temperature range. A thermochromic module 110 (Fig 4-A and 4-B) is printed with thermochromic materials. A thermochromic digit 80 (Figs 2-A and 2-B) is comprised of thermochromic modules 110 (Fig 4-A and 4-B) instead of standard ink modules 20 (Fig 1). An example of a null barcode 120 is shown in Fig 5. Null barcode 120 (Fig 5) incorporates thermochromic materials into all of its digits 30.

From the description above, a number of advantages of the thermochromic bar code become evident:

- The thermochromic bar code provides the ability to print two bar codes within the space of a single bar code. A secondary bar code can replace a base bar code when the desired temperature range is achieved.
- The thermochromic bar code can be printed using normal packaging printing technology without significantly increasing printing costs.
- The thermochromic bar code requires no hardware modifications of bar code readers.
- The thermochromic bar code allows several new functional uses of a bar code. For example, it can establish and maintain a previous temperature range which then can be used to record an environmental event in the bar code's history. This functionality can be used practically to determine if a product, such as meat, has reached a dangerous temperature range. It can also be used to establish temperature differences in a group of items. The most apparent commercial use is its attachment to a retail product that has both hot and cold locations within a store. This will allow businesses in the supply chain to identify from which location the product was actually sold.

### Operation-Figs 1 to 5

Thermochromic bar code 130 (Figs 2-A and 2-B) can be printed using current standard printing technology. It can be scanned by any bar code reader (not shown). A bar code reader is a device which can optically scan bar code 10 (Fig 1) and translate its code into electrical signals.

The purpose of this invention is to incorporate two separate bar codes 10 (Fig 1) within the space of one bar code 10 (Fig 1) such that each code is exclusively visible at a specific temperature range. One possible method of printing thermochromic bar code 130, as shown in Figs 2-A and 2-B, is to first print bar code 10 (Fig 1) in standard ink, then print overlapping module(s) 20 (Fig 1) with thermochromic material. The thermochromic materials used are only visible at a certain temperature range. When the temperature of thermochromic bar code 130 is not within this range, it appears as Fig 2-A. When the temperature of thermochromic bar code 130 is within this range, thermochromic modules 110 (Figs 4-A and 4-B) will become visible and display thermochromic bar code 130 as seen in Fig 2-B. This method allows for two or more separate bar codes 10 to be printed in the same area of a single bar code 10.

Depending on the type of thermochromic materials used, the thermochromic bar code could have different uses:

- To identify product position within a store, the thermochromic materials used will be able to convert repeatedly from visible to invisible, as shown in Figs 2-A and 2-B, depending on the product's current temperature.
- To identify a product's temperature history or to determine whether a product has been exposed to undesirable thermal conditions, the bar code would be created with thermochromic materials that transform permanently into a null bar code. The null bar code shown in Fig 5 is one in which no distinction between dark modules and light modules can be

made by scanning equipment. An example of said null bar code would be an area of solid black or solid white.

#### Sources of Supply

The following companies are suppliers of thermochromic materials and dyes:

CHROMATIC TECHNOLOGIES INCORPORATED, Ithaca, New York

SPEAR U.S.A., Mason, Ohio

FLINT INK CORPORATION, Dallas, Texas

MCK CONSULTING INC., Mississauga, Ontario

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### **Conclusion, Ramifications and Scope of Invention**

The thermochromic bar code described here will provide suppliers and retailers a reliable method of determining whether a product sold came from a refrigerator or a shelf. This is accomplished by using the thermochromic properties of an ink to imbed a second bar code within a primary bar code. This relatively inexpensive process of identifying product will require minimum hardware and software modification of enterprises in the supply chain.

Although the description above contains many reference to the UPC bar code, this invention is not limited to the UPC. It can be used for EAN, JAN, and any other bar code for which the use of this process is desired. This thermochromic bar code could also be useful as an efficient method of identifying temperature differences among a set, sample, or population of items.

Similarly, an entire thermochromic bar code could be attached to a product that must be maintained below a certain temperature range. If the temperature exceeds the desirable range, the bar code would disappear, either partially or wholly. For example, assume milk must be kept below 52 degrees Fahrenheit. Exposure above that temperature range causes the quality of the product to degrade. If the carton exceeds the safety temperature, the UPC code would permanently vanish making the product unsalable.

Accordingly, the scope of this invention should be determined not by the embodiment illustrated, but by the appended claims and their legal equivalent.

Claims:

1. A method of producing a bar code, comprising:

- (a) any base bar code printed in a usual and customary manner, and
- (b) at least one module printed with a thermochromic material within said base bar code,

whereby, the storage temperature of said bar code can be determined when said bar code is scanned by a bar code reader and,

whereby, a plurality of codes can be incorporated into the space of a single bar code.

2. A method of producing a bar code comprising:

- (a) a revocable bar code printed entirely with a quondam thermochromic material
- whereby, said bar code can be rendered permanently invisible to warn a bar code reader of an existing or historically undesirable environmental condition.

3. A method of producing a bar code comprising:

- (a) a base bar code printed with a thermochromic material, and
  - (b) at least one module printed with at least one other thermochromic material within said base bar code,
- whereby, each thermochromic material responds to a separate temperature range, and
- whereby, said bar code can display a plurality of predetermined codes, including a null code, in order to measure a series of temperature variations.

0453545-120390

Sub A2

Sub A3





32158M55309

# Declaration and Power of Attorney United States Patent Application

UNITED STATES  
Patents and Design Patents  
Sole & Joint Inventors  
Convention & Non-convention  
PCT & Non-PCT  
This form cannot be amended, altered  
or changed after it is signed.  
(For use only for inventors who  
understand the English language.)

As a below named inventor, I hereby declare that:  
My residence, post office address and citizenship are as stated below next to my name.  
I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint  
inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on  
the invention entitled **THERMOCHROMIC BAR CODE**

(check one) ☒ is attached hereto.  
☐ was filed as U.S. Application No. \_\_\_\_\_ on \_\_\_\_\_ and (if applicable) was amended on \_\_\_\_\_  
☐ was filed as PCT International Application No. \_\_\_\_\_ on \_\_\_\_\_ and (if applicable) was  
amended under PCT Article 19 on \_\_\_\_\_  
(I authorize any attorney appointed below to insert information in the preceding blanks.)

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.  
I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) or §365(b) of any foreign and PCT application(s) for patent or inventor's  
certificate, or §365(a) of any PCT international application which designated at least one country other than the United States of America listed in this Declaration.  
I have also identified below any foreign application for patent or inventor's certificate or PCT international application having a filing date before that of the  
application(s) on which priority is claimed:

Foreign/PCT Application No.	Country	Filing Date	Priority Claimed? (yes/no)

I hereby claim the benefit under Title 35, United States Code, §120 or §365(c) of any United States application and PCT international application designating the  
United States of America listed in this Declaration and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United  
States application or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to  
disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of  
the prior application and the national or PCT international filing date of this application:

U.S. Application No.	Filing Date	Status (patented/pending/abandoned?)
08/986,287	6 December 1997	abandoned, but under petition for revival

I hereby claim priority benefits under Title 35 United States Code §119(e) of any U.S. provisional application(s) listed below:

U.S. Provisional Application No.	Filing Date

I hereby appoint the following attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: Michael  
K. Carrier, (42391), Herbert M. Hanegan (25682), J. Rogers Lunsford, III (29405), Michael A. Makuch (32263), William F. Rauchholz (34701), Dennis C.  
Rodgers (32936), Charles L. Warner, II (32320), Robert G. Weilacher (20531), Richard G. Young (20628).

Send all correspondence to: Smith, Gambrell & Russell, LLP, Beveridge, DeGrandi, Weilacher & Young Intellectual Property Group, 1850 M Street, N.W. (Suite  
800), Washington, D.C. 20036. All facsimiles may be sent to (202) 659-1462. Direct all phone calls to (202) 659-2811.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to  
be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment,  
or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of  
the application or any patent issued thereon.

Citizenship: United States

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Date: \_\_\_\_\_

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Post office address: 4141 Horizon N. Pkwy. #1133, Dallas, Texas, 75287

Citizenship: United States

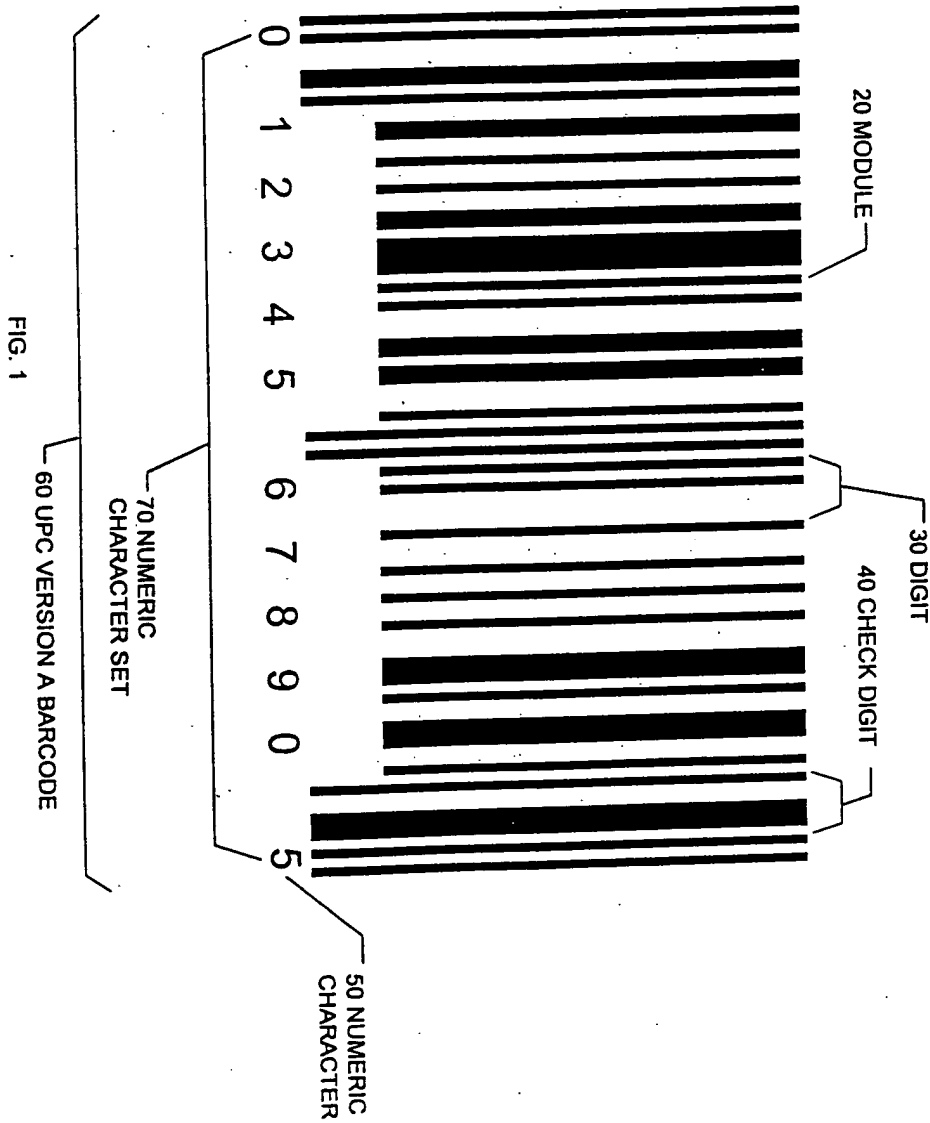
Signature: \_\_\_\_\_  
☐ Additional inventors and/or prior applications are listed in attached Supplemental Sheet(s).

Date: \_\_\_\_\_ SGR/BDWY 199

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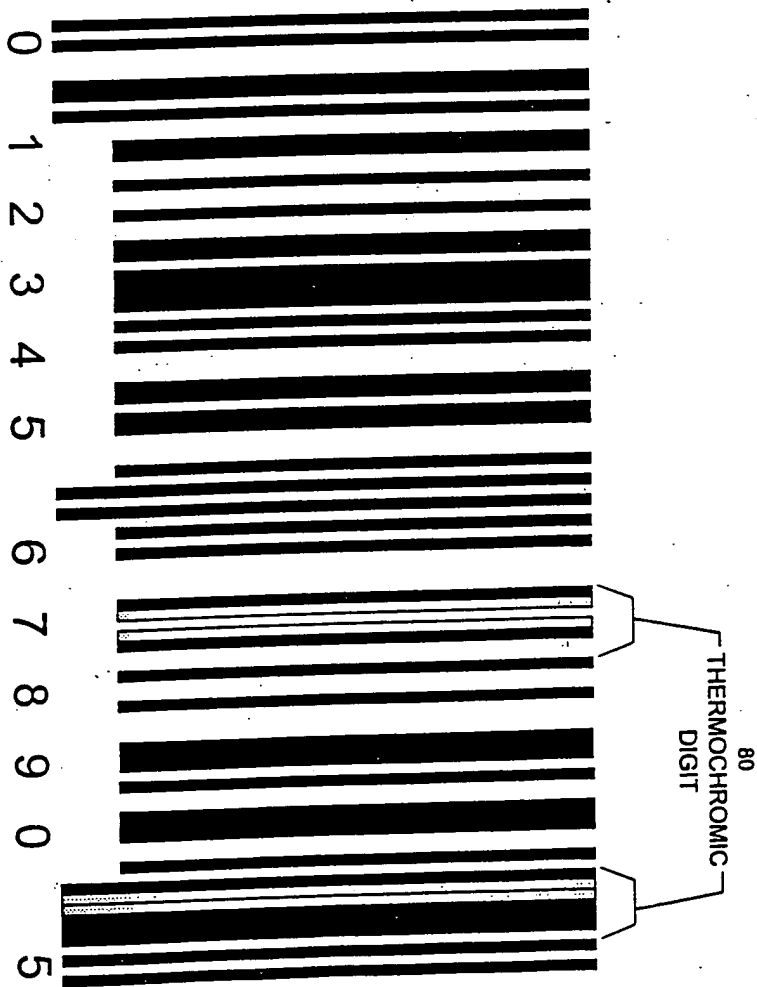


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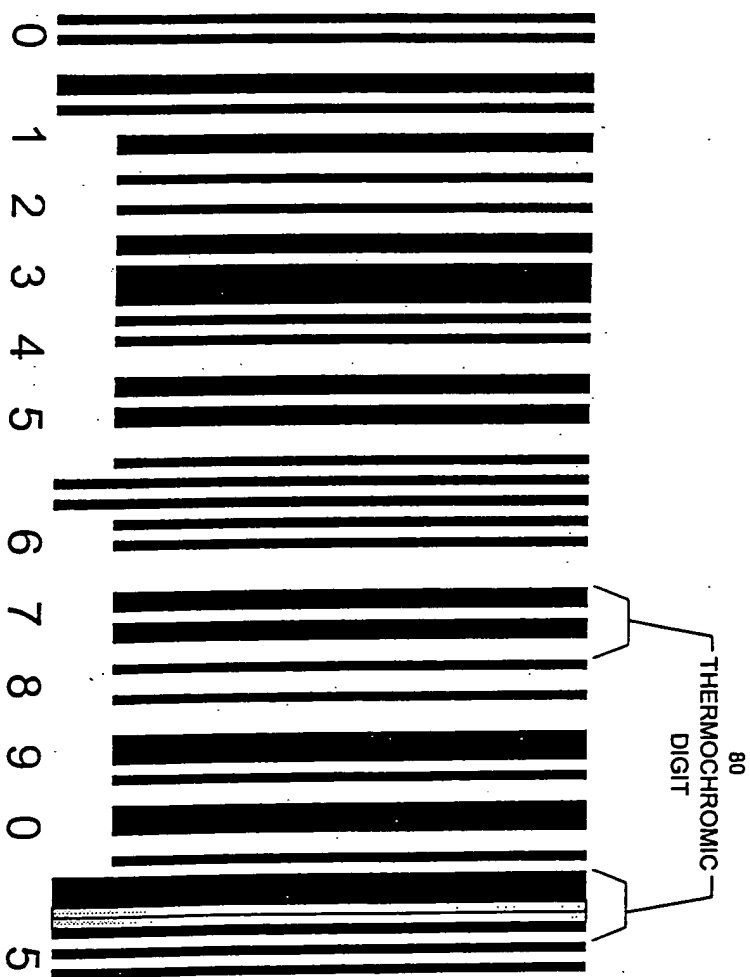


FIG. 2-B

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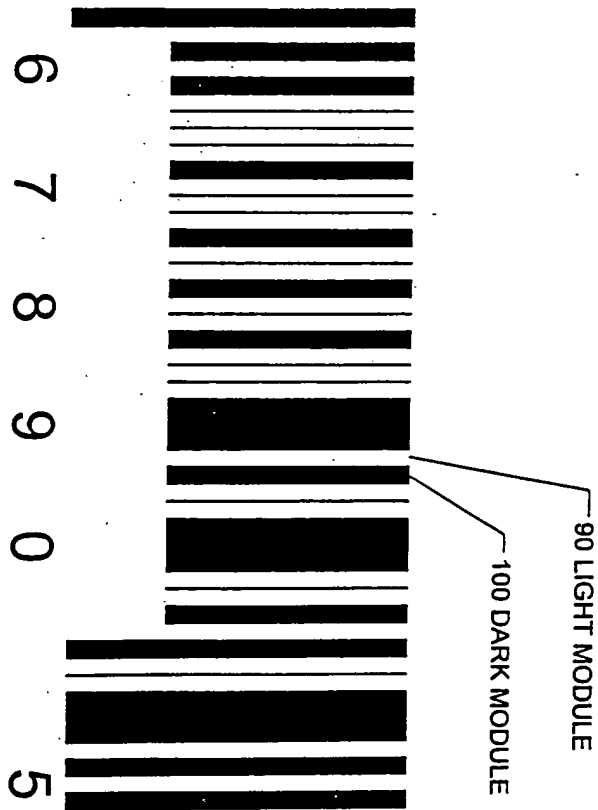


FIG. 3

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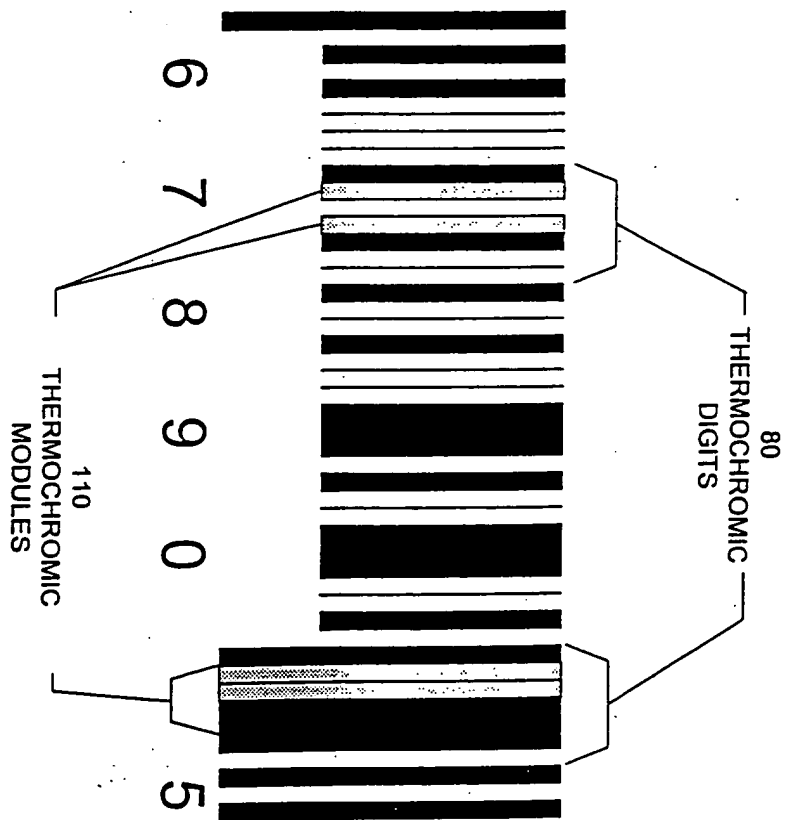


FIG. 4A

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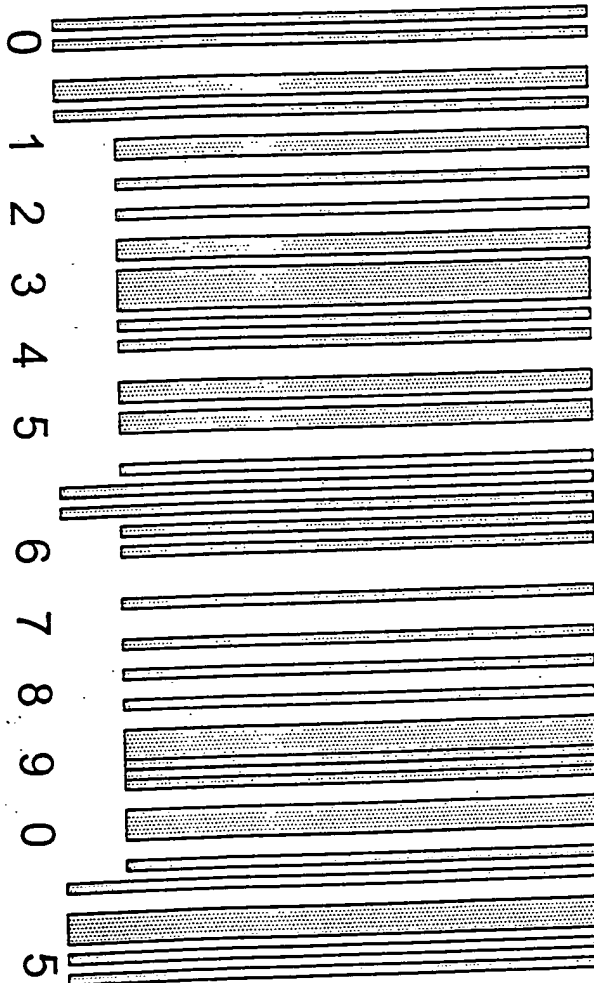


Fig. 5

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